S.B.CIVIL WRIT PETITION NO. 3721/93

Dawar Ram Choudhary vs. State & ors.

DATE OF ORDER : 27/7/2007

HON'BLE SHRI RAJESH BALIA, J.

Mr.P.P.Chaudhary, for the petitioner.
Mr.D.C.Sharma, for the respondents.

Heard learned counsel for the parties.

This petition is filed for claiming salary from 1976-77 to 31st October, 1991 in the pay scale of Accountant, on the principle of equal pay for equal work, when petitioner has allegedly discharged the duties of regular Accountant during this period. He was paid salary in the pay scale of LDC upto 31st March, 1990 and thereafter he has been paid extra duty allowance of Rs.50/- per month until 31.10.1991 when regularly selected accountant was posted and he was required to discharge the functions of his parent post once again.

The petitioner is an employee of Marketing Cooperative Society, which according to the petitioner is under the management of Manager, who is a Government

servant on deputation. He further alleged that the share capital is provided by the State Government, however the Constitution of the Marketing Cooperative Society or its by-laws have not been placed on record & only a bald assertion is made without any supportive material for the purpose of claiming it a State under Article 12 of the Constitution.

Since no reply has been submitted by the respondents, learned counsel for the petitioner urges that the averments made in the petition may be taken to be admitted and on that position he is entitled to seek a mandamus for being paid equal to the amount payable for the post, duty of which he has discharged. As per the assertion in the writ petition, he was verbally ordered to discharge the functions of Accountant somewhere in 1976-77 and since then he is discharging the duties of Accountant.

From the material placed on record, it

transpires that Accounts of 1.7.87 to 1.3.1989 were signed by the applicant has Accountant and also by letter dated 25/4/1987 he has been described as Accountant. However, there has been no other material placed on record, which suggests that apart from the period from 1987 to 1989, he was discharging the functions of Accountant. The other admitted position is that from 31/3/1990 he was paid extra duty allowance of Rs.50/- in addition to his salary for discharge of functions as Accountant. This assertion rather suggests that the petitioner sometime in between 1987 to 1989 may have been required to work as accountant in addition to duties of his parent post of LDC for the purpose of signing accounts as accountant but he did not discharge the functions of accountant regularly and whenever he was asked to function as accountant in addition to his duty, for indefinite period he has been paid Rs.50/- as extra duty allowance upto 31st March, 1990 until regularly selected accountant has been appointed.

In these circumstances, petitioner is not entitled to seek mandamus to be paid salary in the pay scale of Accountant. In this connection, it will not be out of place to notice here that for the first time on 25/9/1992, the petitioner has made prayer to the management to regularise him on the post of Accountant without any claim to salary of Accountant for last 15 years. Thereafter, in October, 1992 after some outsider has been appointed through direct recruitment as Accountant, the petitioner has prayed for being promoted from LDC to Accountant keeping in view his previous experience as Accountant, & still no claim to full salary of previous functioning was not claimed. Thereafter, before filing writ petition, for the first time in a representation dated 13/3/1993, the petitioner came out with a case that he has been continuously working as Accountant since 1975-76 till 1992, which again is contrary to his own pleading and has asked for promotion. On having failed to secure promotion in response to his demand, he finally after serving a notice for demand of justice vide

Annex.P/9 on 26/4/1993 claimed for the first time salary in the pay scale of Accountant from 1976 to 31st October, 1991.

We may notice that in the first instance the petitioner in his representation has asserted that he was discharging the functions of Accountant since 1975-76. In the writ petition, he has come out with a case that he was discharging the functions of Accountant since 1976-77 by verbal order, which goes to suggest that this assertion is not on any factual foundation but is on some estimate. There being no corroborative piece of evidence to suggest as to when he was asked to discharge the function of Accountant. However, when he was asked to discharge functions of Accountant in March, 1990, he was being paid extra duty allowance which belies the claim of the petitioner that he is discharging functions of Accountant throughout.

Be that as it may, this being a claim for past

services rendered by the petitioner cannot be stated to be a continuous cause of action but is a money claim for which he was getting extra duty allowance for a part of period. The claim even on the basis of equal pay for equal work before filing the writ petition is hopelessly time barred if relief is to be claimed by civil suit as a vested right. The petition for money claim beyond the period of limitation, admittedly, cannot be entertained in exercise of extra ordinary jurisdiction to get over bar of limitation. It suffers from long unexplained delay and latches.

In these circumstances, I am of the opinion that keeping in view the material on record, the petitioner when asked to work for a short period during 1991 in addition to his own duties for which he was paid extra duty allowance of Rs.50/- per month and since he was not regularly appointed as Accountant, he is not entitled to equal pay for equal work for the period claimed by him.

Accordingly, the petition fails and is hereby dismissed.

(RAJESH BALIA), J.

pankaj baweja